

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DERRICK LEE SMITH,

Petitioner,

Case Number: 1:20-cv-10649

Honorable Thomas L. Ludington

v.

MICHIGAN PAROLE AND
COMMUTATIONS BOARD,

Respondent.

**OPINION AND ORDER DISMISSING PETITION FOR WRIT OF HABEAS
CORPUS, DENYING CERTIFICATE OF APPEALABILITY, AND DENYING
LEAVE TO PROCEED IN FORMA PAUPERIS**

Petitioner Derrick Lee Smith, a Michigan prisoner, has filed a writ of habeas corpus under 28 U.S.C. § 2254. He seeks habeas relief on the ground that former Michigan Governor Rick Snyder commuted his sentence on February 3, 2019, but the Michigan Parole and Commutations Board has failed to schedule a public hearing. He seeks immediate release.

In 2008, Petitioner pleaded no contest in Wayne County Circuit Court to two counts of kidnapping, Mich. Comp. Laws § 750.349, and six counts of first-degree criminal sexual conduct, Mich. Comp. Laws § 750.520b(1)(c). He was sentenced to eight concurrent terms of 22.5 to 75 years in prison. His convictions and sentences were affirmed on direct review. *People v. Smith*, No. 294843 (Mich. Ct. App. Jan. 4, 2010), lv. den. 486 Mich. 929 (2010) (table).

Petitioner filed this habeas petition on March 9, 2020. He claims that in February 2019, Governor Rick Snyder commuted his sentence.¹ Approximately two weeks before filing this petition, Petitioner filed a habeas corpus petition in this District raising the same claim raised in this petition. *See Smith v. Burt*, No. 2:20-cv-10465 (Roberts, J.).

“The filing of multiple federal actions arising out of the same facts is strongly discouraged, and plaintiffs take such a course at the peril that the adjudication of one case will have preclusive effect on the other.” *Twaddle v. Diem*, 200 F. App’x 435, 439 (6th Cir. 2006). Lawsuits are duplicative if they “involve ‘nearly identical parties and issues.’” *Zide Sport Shop of Ohio v. Ed Tobergate Associates, Inc.*, 16 F. App’x 433, 437 (6th Cir. 2001). When faced with a duplicative suit, a federal court may exercise its discretion to stay or dismiss the suit before it, allow both cases to proceed, or enjoin the parties from proceeding in the other suit. *Twaddle*, 200 F. App’x at 438. “[S]imple dismissal of the second suit is [a] common disposition because plaintiffs have no right to maintain two actions on the same subject in the same court, against the same defendant at the same time.” *Id.* (quoting *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138–39 (2d Cir. 2000)).

The habeas petition in this case raises the same issue currently under consideration in case number 2:20-cv-10465. Petitioner is not entitled to maintain two actions on the same subject in the same court at the same time. *Id.*

¹ The Court notes that Rick Snyder’s term as Governor of the State of Michigan ended in 2018. *See* <https://www.michigan.gov/formergovernors/0,4584,7-212-96470---,00.html> (last accessed Apr. 3, 2020).

Accordingly, it is **ORDERED** that the habeas petition in this case, ECF No. 1, is **DISMISSED**.

It is further **ORDERED** that a certificate of appealability is **DENIED** under 28 U.S.C. § 2253(c)(2) because reasonable jurists would not debate the Court's conclusion that the petition should be dismissed without prejudice. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

It is further **ORDERED** that leave to proceed *in forma pauperis* on appeal is **DENIED** because an appeal from this decision cannot be taken in good faith. *See Fed. R. App. P. 24(a)*.

Dated: May 5, 2020

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon **Derrick Lee Smith** #267009, MUSKEGON CORRECTIONAL FACILITY, 2400 S. SHERIDAN, MUSKEGON, MI 49442 by first class U.S. mail on May 5, 2020.

s/Kelly Winslow
KELLY WINSLOW, Case Manager